ORIGINAL EX PARTE OR LATE FILED

MCI Telecommunications Corporation

1801 Pennsylvania Avenue, NW
Washington, DC 20006
202 887 2551
FAX 202 887 2676

Mary L. Brown
Senior Policy Counsel
Federal Law and Public Policy

RECEIVED
MAY 02 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 2, 2000

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte in CC Docket Nos. 96-98, 96-262, 94-1, 99-249, 96-45, 98-137, 99-117

Dear Ms. Salas:

On May 1, 2000, Lori Wright, Alan Buzacott, and the undersigned, representing MCI WorldCom, met separately with Sarah Whitesell of Commissioner Tristani's office, Rebecca Beynon of Commissioner Furchtgott-Roth's office, and Kyle Dixon of Commissioner Powell's office. On May 2, 2000, Lori Wright, Alan Buzacott, Chuck Goldfarb, and the undersigned met with Jordan Goldstein of Commissioner Ness's office.

The attached presentation was used in the discussion. MCI WorldCom discussed the CALLS plan and related proceedings, pointing out that (1) the CALLS plan does not do enough to move excessive ILEC access charges to cost; (2) that the ILECs' depreciation proposal could lead to increases in interstate and intrastate rates and could undermine local competition; and (3) that there is no justification for the proposed extension of the loop and transport use restriction. This letter addresses the loop and transport combination use restriction issue in more detail.

It is MCI WorldCom's understanding that the Commission is considering a one-year extension of the use restriction on unbundled loop and transport combinations adopted in the November 24, 1999 Supplemental Order in CC Docket No. 96-98. MCI WorldCom has shown, in both the CALLS proceeding and in the CC Docket No. 96-98 local competition proceeding,[1] that any extension of the Supplemental Order's use restriction would be both unlawful and bad policy. Indeed, the seven-month "interim" use restriction adopted in the Supplemental Order is itself unlawful, and whatever deference may have been due the Commission would be sharply diminished if the Commission were to extend the Supplemental Order's "interim" period to 20 months or more. There have been no

[1]MCI WorldCom Comments on the Modified CALLS Plan, CC Docket Nos. 96-262; 94-1; 99-249; 96-45, April 3, 2000; Ex Parte letter from Chuck Goldfarb, MCI WorldCom, to Magalie R. Salas, FCC, CC Docket No. 96-98, April 6, 2000.

changes in circumstance that would justify any delay in resolving the Fourth FNPRM, much less a one-year delay.

If the Commission does, nonetheless, extend the use restriction, then, as MCI WorldCom has previously advocated,[2] the Commission should take steps to mitigate the harm that such an extension will cause to customers and competitors in the special access market. The Commission should, in particular, recognize that the harm to competitors and customers will become acute if the ILECs begin to obtain pricing flexibility under the Pricing Flexibility Order's Phase I/Phase II framework while the use restriction remains in effect.

As the Commission discussed in the Pricing Flexibility Order, the Phase I/Phase II pricing flexibility framework is intended to implement the "market-based" approach to access reform adopted in the 1997 Access Reform Order.[3] The Commission's adoption of the market-based was predicated on competitors' ability to obtain and use unbundled network elements to provide competitive interstate access services.[4] It would be arbitrary and capricious for the Commission to allow one piece of its "market-based" approach to access reform -- the pricing flexibility measures adopted in the Pricing Flexibility Order -- to proceed, while at the same time extending a use restriction that attacks the foundation of the market-based approach -- competitors' ability to use unbundled network elements to provide interstate access services.

Special access customers face a significant risk of higher prices if the ILECs are permitted to obtain pricing flexibility while the Supplemental Order's use restriction remains in effect. As the Commission itself has recognized, an ILEC can meet the Phase II test, and remove its special access services from price cap regulation, even if there is effective facilities-based competition only on some routes or for some types of services. In the Pricing Flexibility Order, the Commission specifically "recognize[d] that the regulatory relief we grant upon a Phase II showing may enable incumbent LECs to increase access rates for some customers."[5] And, in the UNE Remand Order, the Commission found that its pricing flexibility rules "do not . . . describe market conditions

---

[2]Id.

[3]Access Charge Reform, Fifth Report and Order, CC Docket No. 96-262, rel. August 27, 1999, at ¶ 2 (Pricing Flexibility Order).

[4]Access Charge Reform, First Report and Order, 12 FCC Rcd 15982, 16094 (¶ 262) (1997).

[5]Pricing Flexibility Order at ¶ 155. The Phase II test requires only that 65 percent of the ILEC's special access revenues be subject to competitive supply, and considers competitive supply to exist even if there is only a single competitor.

where requesting carriers would not be impaired without access to unbundled transport."[6]

Based on data placed on the record by the ILECs, customers could soon see special access price increases in a large number of cities. The RBOCs and GTE have said that they already qualify for Phase II pricing flexibility in 142 of the 320 MSAs served by the RBOCs and GTE, representing fully 72 percent of RBOC and GTE special access revenues.[7] Customers are therefore facing the prospect that, in the near future, the vast majority of ILEC special access services will not be subject to price cap regulation.

If the Commission does extend the use restriction, which it should not, then the Commission should, on its own motion, modify the procedural rules that govern the Common Carrier Bureau's review of ILEC pricing flexibility petitions. When the Commission adopted Section 69.774(f)(1) of its rules, which gives the Bureau only 90 days to review an ILEC pricing flexibility petition, there were no restrictions on the use of unbundled network elements. Given that the interim use restriction represents a significant change in the competitive landscape, and heightens the risks associated with granting pricing flexibility, the Bureau should be permitted more than 90 days to make a determination. Accordingly, the Commission should modify its procedural rules to extend, on an interim basis, the review period for pricing flexibility petitions from 90 days to 12 months. The Commission can adopt this procedural change in an expedited fashion. Administrative agencies are generally free to fashion their own rules of procedure.[8] In this case, a significant change in the substantive competition rules provides more than sufficient justification for extending the period in which the Chief of the Common Carrier Bureau may consider a petition for pricing flexibility.

Modification of the procedural rules governing pricing flexibility would be consistent with the Commission's stated intent, in the Supplemental Order, to "avoid disturbing the status quo" while it considers "the legal and economic implications" of loop and transport

---

[6]Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, rel. Nov. 5, 1999, at ¶ 341 n.673.

[7]USTA Comments at 10, CC Docket No. 96-98, January 19, 2000 (citing the "Special Access Fact Report" attached to USTA's Comments).

[8]Under the APA (5 U.S.C. section 553(b)(3)(A)), notice and comment requirements do not apply "to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice". In applying this provision the Supreme Court has recognized that "[a]dministrative agencies 'should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'" *FCC v. Schreiber*, 381 U.S. 279, 290 (1965), quoting *FCC v. Pottsville Broadcasting*, 309 U.S. 134, 143.

combinations.[9] The "legal and economic implications" of unbundled loop and transport combinations include not only their impact on ILEC special access revenues, but also the effect that restricting these combinations would have on special access customers and competitors if the ILECs obtained pricing flexibility. To date, no ILEC has sought Phase I or Phase II pricing flexibility.

Please contact me if you have any questions concerning this submission.

Sincerely,

Mary L Brown
By ABG

Mary L. Brown

cc: Dorothy Attwood
Jordan Goldstein
Sarah Whitesell
Rebecca Beynon
Kyle Dixon
Larry Strickling
Jake Jennings
Jody Donovan-May
Robert Atkinson

---

[9] Supplemental Order at ¶ 7.

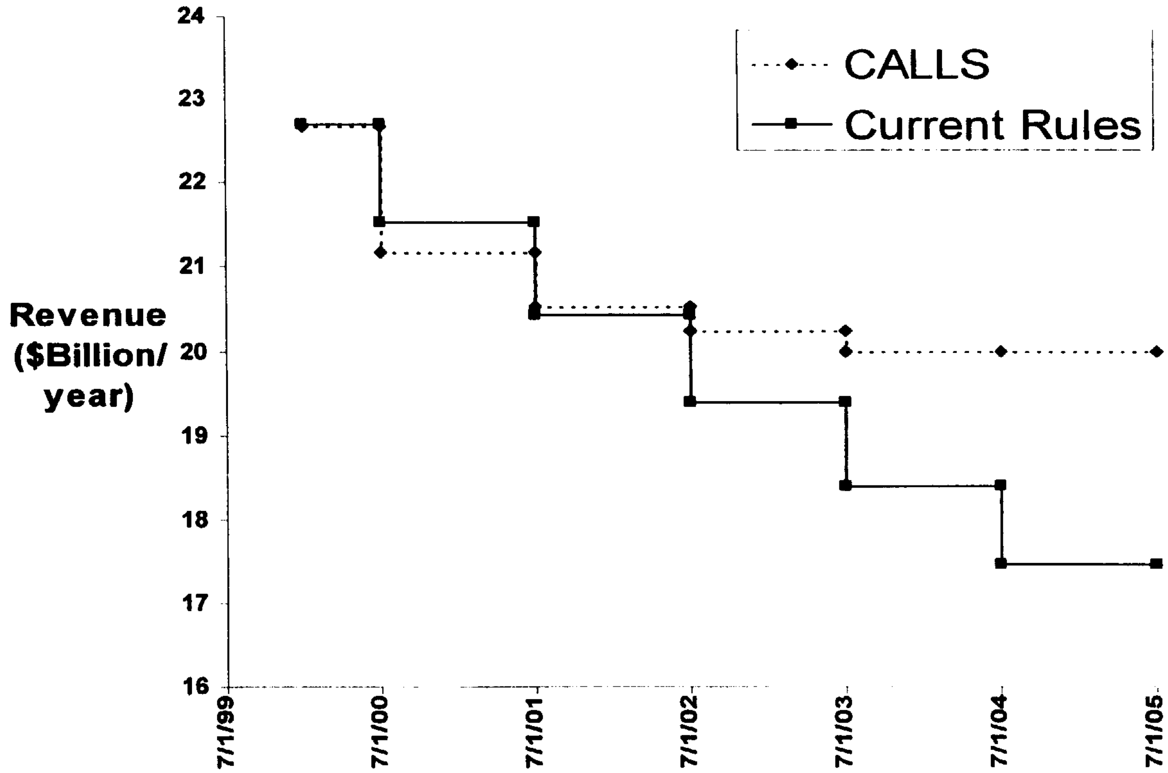
The CALLS Package is Bad for Consumers

1. CALLS plan:
   Consumers will pay more than under current rules

2. Extension of the loop/transport use restriction:
   Special access customers will face higher rates

3. Depreciation deregulation:
   Will increase rates and undermine local competition

Consumers Will Pay More Under CALLS



Extending the Use Restriction Will Harm Special Access Customers

- The use loop/transport use restriction is unlawful
  - No basis for an extension
- The use restriction will increase special access rates
  - Over 70% of ILEC special access revenues are already eligible for Phase II pricing flexibility
  - Special access is the "on-ramp" to the Internet
- If the use restriction is extended
  - The Commission should modify its procedural rules to allow 12 months to review pricing flexibility requests
  - Target special access X-factor reductions to DS1, VG

The Commission Should Terminate the Depreciation Proceeding

- Procedurally questionable:
  - December 1999 decision permitted depreciation relief only under specific circumstances
  - ILEC proposal does not follow that plan -- the ILECs are trying to renegotiate the December 1999 conditions.
  - No record evidence to support the ILEC proposal
  - Commission allowed only two weeks for comments. NARUC Comments: "State commissions which hold publicly noticed meetings can barely react in such a brief amount of time."

The Commission Should Terminate the Depreciation Proceeding (cont'd)

- Will undermine local competition
  - 24 states have used FCC depreciation factors in setting interconnection/UNE rates
  - NARUC Comments: "there will certainly be more pressure for the FCC and states to use the [ILEC] financial depreciation rates as inputs to the proxy models"
- Risk of higher interstate and intrastate rates